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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re	)	Case No. 19-30088 (DM)
	)	Chapter 11
PG&E CORPORATION and	)	(Lead Case)
PACIFIC GAS AND ELECTRIC	)	(Jointly Administered)
COMPANY,)	
	)	INDIVIDUAL BUTTE FIRE, NORTH
Debtors.	)	BAY FIRES, AND CAMP FIRE VICTIM
	)	CLAIMANTS' OBJECTION TO
	)	DEBTORS' "BAR DATE MOTION"
	)	(DKT. NO. 1784)
<input type="checkbox"/> Affects PG&E Corporation	)	Date: June 11, 2019
<input type="checkbox"/> Affects Pacific Gas and Electric Company	)	Time: 9:30 a.m. (Pacific Daylight Time)
<input checked="" type="checkbox"/> Affects both Debtors	)	Place: United States Bankruptcy Court
*All papers shall be filed in the Lead Case,	)	Courtroom 17, 16th Floor
No. 19-30088 (DM)	)	San Francisco, CA 94102
	)	Objection Deadline: May 28, 2019

1 **I. INTRODUCTION**

2 In 2015, 2017, and 2018, PG&E's recklessness torched almost 470,000 acres, killed more
3 than 130 people, damaged or destroyed over 30,000 homes and structures, and left thousands of
4 people homeless, burned or otherwise injured and traumatized. To shelter itself from lawsuits by
5 these thousands of victims (the "Wildfire Claimants"), PG&E filed for bankruptcy. It now comes to
6 this Court seeking an order approving a burdensome, confusing, and unnecessarily complex proof of
7 claim form that will strip many of these Wildfire Claimants of their ability to make claims against
8 PG&E and recover their losses.¹ Notably, PG&E insists that the Wildfire Claimants respond to
9 questions, many of them irrelevant, to which any experienced mass tort lawyer knows victims
10 generally do not know the answer, and produce documents that were destroyed in or will be difficult
11 to obtain due to the very fires that PG&E started.

12 Objectors herein are 133 survivors of the 2015 Butte Fire, 333 survivors of the 2017 North
13 Bay Fires, and 1,923 survivors of the 2018 Camp Fire, including the families of 18 people who died
14 in three of those fires. (Declaration of Amanda L. Riddle in Support of Individual Butte Fire, North
15 Bay Fires, and Camp Fire Victim Claimants' Objection to Debtors' "Bar Date Motion" (Riddle
16 Decl.), ¶ 1-2.) They request that this Court reject PG&E's proposed claim form and, instead,
17 approve the Tort Claimant Committee's proposed proof of claim form.

18 **II. FACTUAL BACKGROUND**

19 Objectors are victims and survivors of the 2015 Butte Fire, the 2017 North Bay Fires, and the
20 2018 Camp Fire. (Riddle Decl., ¶ 2.) A significant number of Objectors lost their primary residence
21 and are now displaced, living in trailers, RVs, hotels, rental units, and with friends and family. (*Id.*
22 at ¶ 3; Declaration of Bradford Bowen in Support of Individual Butte Fire, North Bay Fires, and
23 Camp Fire Victim Claimants' Objection to Debtors' "Bar Date Motion" (Bowen Decl.), ¶ 1-3.)
24 Many Objectors do not have power and water hookups for their trailers and RVs and many obtained
25 temporary housing in areas far from their hometown. (Riddle at ¶ 3; Bowen Decl., at ¶ 3.) Many
26 Wildfire Claimants have been unable to maintain cell phone numbers, addresses, or email contact.

27
28 ¹ Objectors understand that the Tort Claimants' Committee will address PG&E's proposed Bar Date
and notice procedures, and defers to the TCC on those issues, only addressing PG&E's proposed
proof of claim form in this objection.

1 Many have never used email before, and many of those who had, have been unable to find consistent
2 internet access. Many Wildfire Claimants do not have a smart phone. Many more do not get service
3 at their homes. (Bowen Decl., ¶ 4.)

4 In large numbers, Objectors suffer from the emotional fallout of these disasters, including
5 from post-traumatic stress disorder, major depressive disorder, adjustment disorder, depression and
6 anxiety. (Riddle at ¶ 6; see also Bowen Decl., at ¶ 2, 5.) This is all true of many victims of these
7 fires, but most significantly the victims of the Camp Fire, which occurred less than seven months
8 ago. (Bowen Decl., at ¶ 2.)

9 Counsel for Objectors have represented victims and survivors of PG&E caused and other
10 disasters for more than a decade, including the wildfires at issue in this matter, as well as hundreds
11 more survivors of the 2018 Montecito Mudslide, the 2017 Thomas Fire, and the 2010 San Bruno
12 Explosion. (Riddle Decl., at ¶ 2.) In Objectors' Counsels' experience, it is common for disaster
13 victims to not understand their insurance coverage, including the claims and payment amounts and
14 process or their legal claims and damages available under the law. (Riddle Decl., at ¶ 7.) It is also
15 generally the case that documents that support victims' claims were destroyed in the very disaster
16 that caused their injuries and replacement documents are costly, time-consuming, or difficult to
17 obtain. (Riddle Decl., at ¶ 5, 8; Bowen Decl., ¶ 6.) The aftermath of a wildfire or explosion is
18 incredibly overwhelming and scurrying around obtaining documents to support damages is an
19 arduous and sometimes impossible task. (Riddle Decl., at ¶ 10; Bowen Decl., at ¶ 2-9.) It is also
20 rare for disaster victims to know the value of their claims. Expert witnesses are generally used for
21 such calculations. (Riddle Decl., at ¶ 9.) As a result, it will be very difficult for many Wildfire
22 Claimants to successfully submit a claim using PG&E's proposed proof of claim form. (Riddle
23 Decl., at ¶ 10; Bowen Decl., at ¶ 9.)

24 **III. LEGAL ARGUMENT**

25 **A. WILDFIRE CLAIMANTS SHOULD NOT BE REQUIRED TO RESPOND TO** 26 **DISCOVERY IN ORDER TO SUBMIT A CLAIM**

27 The broad range of information and documents required by PG&E's proposed proof of claim
28 form is unnecessarily and improperly sought. PG&E claims in its motion that the information it

1 seeks is “critical to assessing the Debtors’ aggregate liability.” (Debtors’ Motion at p. 27:21-24.)
2 PG&E’s proposed order also requires each claimant to “set forth with specificity the legal and
3 factual basis for the alleged claim, including all of the information requested in the Wildfire
4 Claimant Proof of Claim Form,” and produce supporting documents. (Debtors’ Motion, Ex. A at
5 ¶3(c).)

6 However, PG&E does not explain why it believes that this information, with the stated level
7 of specificity, is critical. Is PG&E going to dispute liability on each one of the 2015, 2017 and 2018
8 fires? Liability on the 2015 Butte Fire has already been determined, with the court in that case
9 finding that PG&E caused the Butte Fire. Cal Fire found that PG&E caused at least 19 out of 21 of
10 the North Bay Fires, as well as the Camp Fire. Unless PG&E intends to dispute that it caused each
11 of these fires, including the Camp Fire, for which PG&E’s CEO recently apologized, the Wildfire
12 Claimants need not produce the specific information and documents sought.

13 If what PG&E means is that the specific information and supporting documents are important
14 and necessary to determine the *extent* of PG&E’s liability, that is also not true. Rather, “[e]stimation
15 is a summary procedure whereby the Court *estimates* the value of a claim. A bankruptcy court need
16 only reasonably estimate the probable value of a claim. Such an estimate necessarily implies no
17 certainty and is not a finding or fixing of an exact amount; it is merely the court’s best estimate for
18 the purpose of permitting the case to go forward.” (*In re North Am. Health Care, Inc.*, 544 B.R.
19 684, 692 (Bankr. C.D. Cal 2016).) For this reason, it is also not true, as PG&E’s claims, that
20 “[i]dentifying whether a claim has been covered by insurance is required to value claims accurately
21 and avoid any double-counting of losses recovered across the different categories of claimants.”
22 (Debtors’ Motion at p. 28:4-6.) Even if this was the case, insurance information can be much more
23 easily obtained from the subrogation carriers than it can be from 30,000 individual Wildfire
24 Claimants, many of whom are still displaced and the vast majority of whom are unsophisticated
25 when it comes to matters of insurance claims and payments. (Riddle Decl., ¶ 7.)

26 In addition, PG&E’s heightened pleading standard of “specificity” and document production
27 is improper for a proof of claim. A proof of claim is a written statement setting forth a creditor's
28 claim, supported by writings that evidence the basis of the claim. (Bankruptcy Rule 3001(a).) The

1 purpose of the proof of claim is to alert the court, trustee, and other creditors, as well as the debtor,
2 to claims against the estate. (*In re Daystar of Cal., Inc.*, 122 B.R. 406, 408 (Bankr. C.D. Cal. 1990).)
3 A proof of claim is a notice pleading. Specificity should not be required. In addition, PG&E's
4 liability to the Wildfire Claimants is not created by a writing. Therefore, under Rule 3001, no
5 documents are required to support the proof of claim. (*See also In re Cluff*, 313 B.R. 323, 332.)

6 Wildfire Claimants should not be required to respond to discovery to submit a proof of claim.
7 There is no requirement or basis for making them do so. PG&E's proposed form is unnecessarily
8 and unduly burdensome and a clear ploy to create significant obstacles to the filing of a proof of
9 claim for Wildfire Claimants.

10 **B. PG&E'S PROPOSED PROOF OF CLAIM FORM IS CONFUSING,**
11 **BURDENSOME AND SEEKS IRRELEVANT INFORMATION**

12 **1. Many of the Questions on PG&E's Proposed Proof of Claim Form are**
13 **Confusing and Irrelevant**

14 PG&E's proposed proof of claim form at Question 7 requires the Wildfire Claimant to check
15 the box as to "Which fire is relevant to [their] claim." The form states that only one fire should be
16 selected. The list of fires is incomplete. Certain Wildfire Claimants were impacted by more than
17 one fire. Certain fires converged. (Riddle Decl., at ¶ 4.) This question is confusing, and PG&E
18 does not state why the specific fire is required.

19 PG&E's proposed proof of claim at Question 8 asks for the "Loss of Residence/Structure"
20 address. This question is confusing because it implies that a Wildfire Claimant must have "lost"
21 their home or structures to have a real property claim.

22 PG&E's proposed proof of claim form at Question 8 asks "Do you intend to rebuild?" This
23 question seeks irrelevant information. A Wildfire Claimants' measure of damages for real property
24 loss is not defined by whether they intend to rebuild. Rather, the measure of damages is diminution
25 in value or cost of repair, whichever is less, which an exception made for claimants who have a
26 "genuine desire to rebuild for a personal reason." (Judicial Council of California Civil Jury
27
28

1 Instructions 3903(F).)² A claimant need only to have a ***genuine desire*** to rebuild their home to seek
2 the cost of rebuild or repair. Many Wildfire Claimants cannot and will not intend to rebuild unless
3 and until they get the money to do so, which they will not until PG&E pays their damages in full.
4 (Riddle Decl., ¶ 9.)

5 In various places, the form requires the claimant to state the value of their claim. Disaster
6 victims generally do not know the value of their claims or how to calculate their damages. Expert
7 witnesses are often used to value real property, including structural, forestry, erosion and road
8 damage, personal property, lost wages, and medical and mental health treatment claims, rather than
9 relying on our clients to provide this information. (Riddle Decl., at ¶ 9.) Specifically, PG&E's
10 proposed proof of claim form at Question 11 asks for the value of the claimants' personal injury
11 claim. This question seeks irrelevant information. A claimant is not qualified to determine the value
12 of their personal injury claim and their belief as to the value of their claim is not relevant. Such a
13 determination is made by a finder of fact or through the estimation process.

14 Question 11 is also misleading in that it requires supporting documents such as medical
15 records reflecting the date and nature of the injury, implying that a Wildfire Claimant only has a
16 personal injury claim if they sought medical attention.

17 **2. Insurance Information Should be Sought from Insurers, Not Wildfire**
18 **Claimants, and Should not be a Prerequisite to Filing a Claim**

19 In various places in its proposed proof of claim form, PG&E seeks details about insurance
20 coverage, claims and payments. First, most Wildfire Claimants will not have the knowledge to
21 respond to these specific questions. Often, insurance claims are made piecemeal, over time, as
22 information regarding damage is learned. and payments are also made piecemeal, over time, as
23 claims are approved. Claimants often have multiple insurance policies and more than one insurance
24 claims representative assigned to their case over the period of the claim and each separate payment
25 comes with separate documentation that is not always consistent with prior or subsequent
26

27
28 ² The amount of a Wildfire Claimants' damages is measured by California law. (*In re Cogar*, 210
B.R. 803, 809 (B.A.P. 9th Cir. 1997) *citing* Bankr.Code, 11 U.S.C.A. § 101(5) [Absent overriding
federal interest, existence of claim in bankruptcy is generally determined by state law.])

1 documentation. For these reasons, insurance coverage, claim and payment information is generally
2 obtained directly from the insurers in mass torts cases against PG&E. (Riddle Decl., at ¶ 7.)

3 In addition, the “collateral source rule” precludes consideration of amounts paid by the
4 insurer when valuing a claim. (*Helpend v. S. Cal. Rapid Transit Dist.*, 2 Cal. 3d 1, 7 (1970) [“The
5 Supreme Court of California has long adhered to the doctrine that if an injured party receives some
6 compensation for his injuries from a source wholly independent of the tortfeasor, such payment
7 should not be deducted from the damages which the plaintiff would otherwise collect from the
8 tortfeasor.”]) As such, the amount paid by the insurer is not relevant to the estimation of the wildfire
9 claims.

10 3. PG&E’s Demand for Documents Supporting Their Claims is Confusing, 11 Burdensome and Prejudicial

12 In various places, PG&E’s proposed claim form requires the claimant to provide documents
13 in support of their claims. It is not clear from the form whether the list is exhaustive. It is not clear
14 from the form or the motion whether the claim form will be defective if the specified or other
15 documentation is not attached. Significantly, it is also generally the case that documents that support
16 victims’ claims were destroyed in the very fire from which their claims arise. Many of the Wildfire
17 Claimants’ homes were destroyed, with everything inside burned. While certain Wildfire Claimants
18 may have electronic access to certain documents or may be able to obtain certain documents from
19 public agencies, most of them certainly do not have access to all documents that support their claims.
20 In addition, gathering all documents that support a Wildfire Claimant’s claims is often costly, time-
21 consuming, or difficult, especially considering living circumstances and emotional injuries. (Riddle
22 Decl., at ¶ 8; Bowen Decl., at ¶ 4-6.)

23 IV. CONCLUSION

24 PG&E’s proposed form is a transparent attempt to exclude as many Wildfire Claimants as
25 possible, unfairly prejudicing the most vulnerable claimants in this bankruptcy. It is confusing,
26 seeks irrelevant information and improperly seeks discovery. As such, PG&E’s motion should be

27 / / /

1 denied, and its proposed proof of claim form should be rejected by this Court. The TCC's proof of
2 claim form should be approved.

3
4 DATED: May 28, 2019

Respectfully submitted,

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6
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